

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application. Claims 1-20 are currently pending in this application. No new matter has been added by way of the present amendment. The amendment to claims 1-2 is supported by the Specification at, for example, page 5, lines 1-2. Accordingly, no new matter has been added.

At the outset, the present application is believed to be in condition for allowance. Entry of the accompanying amendment is requested under 37 C.F.R. §1.116, as the amendment does not raise any new issues which would require further search and/or consideration by the Examiner. Furthermore, Applicants request entry of this amendment in order to place the claims in better form for consideration on Appeal.

In view of the amendments and remarks herein, Applicants respectfully request that the Examiner withdraw all outstanding rejections and allow the currently pending claims.

Information Disclosure Statement

The Examiner notes that the listing of references in the specification is not a proper information disclosure statement and, therefore, the references have not been considered.

Applicants respectfully submit that all references listed in the Specification (EP 988,870 A, WO 98/46697 and U.S. 5,240,940) were provided with the Information Disclosure Statement filed on March 23, 2006 and acknowledged by the Examiner in the Office Action dated November 29, 2006.

Issues Under 35 U.S.C. § 102(b)

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cotter et al. (EP 988,790) (hereinafter Cotter '790). Applicants respectfully traverse.

The present invention is directed, inter alia, to a fungicidal mixture comprising a specific triazolopyrimidine derivative of formula I and quinoxifen of formula II in a synergistically effective amount, wherein the weight ratio of the triazolopyrimidine derivative of formula I and quinoxifen is from 50:1 to 1:10. In one of several embodiments of the present invention, the weight ratio of compounds I and II is from 10:1 to 1:5.

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of anticipation. Cotter '790 discloses mixtures of triazolopyrimidines with a long list of commercial fungicides, including quinoxifen. However, Applicants' triazolopyrimidine derivative of Formula (I) represents one of an extremely large number of compounds encompassed by the generic azolopyrimidine of Cotter '790. It is well settled that a genus does not always anticipate a claim to a species within the genus. A compound is anticipated only when one of ordinary skill in the art is able to "at once envisage" the specific compound within the generic chemical formula. *In re Petering*, 301 F.2d 676, 133 USPQ 275 (CCPA 1962). For a compound to be "at once envisaged", one of ordinary skill in the art must be able to draw the structural formula or write the name of each of the compounds included in the generic formula. *Id.*

Because the mixture of Cotter '790 comprises two components selected from extremely long lists of potential candidates, Applicants submit that one skilled in the art would not have

been able to "at once envisage" the specific compound of the instant invention based on the generic teachings of this reference.

Furthermore, Applicants submit that Cotter '790 does not explicitly or implicitly teach a fungicidal mixture comprising components I and II in a weight ratio of from 50:1 to 1:10, as presently claimed.

Additionally, Applicants note that, although the Examiner has made an anticipation rejection and has asserted that Cotter '790 teaches each and every aspect of the present invention, the Examiner nonetheless concedes that "[i]nstant claims differ from the reference in one specific combination" (see Office Action dated May 17, 2007 at page 6, line 11). Applicants submit that Cotter '790 does not disclose the specific combination of a triazolopyrimidine derivative of formula I and quinoxifen of formula II, and thus cannot anticipate the present invention.

Evidently, Cotter '790 fails to teach each and every aspect of the claimed invention, as required by 35 U.S.C. §102. Accordingly, this rejection is improper and should be withdrawn.

Reconsideration and withdrawal of this rejection are thus respectfully requested.

Issues Under 35 U.S.C. § 103(a)

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cotter '790. Applicants respectfully traverse.

The Examiner asserts that the present claims differ from the reference "in one specific combination" and argues that "the indiscriminate selection of 'some' among 'many' is considered prima facie obvious".

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Additionally, there must be a reason why one of ordinary skill in the art would modify the reference or combine reference teachings to obtain the invention. A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l Co. v Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007). There must be a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* The Supreme Court of the United States has recently held that the "teaching, suggestion, motivation test" is a valid test for obviousness, albeit one which cannot be too rigidly applied. *Id.* Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *Id.*

Applicants have discovered that the combination of the specific triazolopyrimidine of formula I and quinoxifen of formula II in a synergistically effective amount results in unexpected and superior control of phytopathogenic fungi from the class of *Oomycetes*, in particular of *Phytophthora infestans* on potatoes and tomatoes and *Plasmopara viticola* on grapevines.

As discussed above, Cotter '790 does not teach the specific triazolopyrimidine of formula (I). Furthermore, Cotter '790 discloses an extremely long list of potential fungicidal compounds with which the generic azolopyrimidine could be mixed. One of ordinary skill in the art would

have to improperly pick and choose the right fungicidal compound and somehow combine that ingredient with the specific triazolopyrimidine of Applicants' formula I (which is not disclosed by Cotter '790) to achieve the present invention. Additionally, Cotter '790 does not teach or suggest the presently claimed weight ratio of components I and II (from 50:1 to 1:10).

Clearly, the cited reference fails to teach or suggest every limitation of the present invention. For this reason alone, this rejection should be withdrawn.

Furthermore, assuming *arguendo* that Cotter '790 is *prima facie* obvious against the present invention (a point which Applicants do not concede), this is rebutted by the unexpected results obtained by the composition of the instant invention. As discussed in Applicants' Specification (*see* Specification at pages 10-12), compounds disclosed by Cotter '790 exhibit an efficacy of 16-52% (*see* Applicants' Table I on page 11 of the present Specification). When these compounds are combined with quinoxifen of formula II, the efficacy observed is 52%. However, when quinoxifen is combined with the specific triazolopyrimidine of Applicants' formula (I) (which is not disclosed by Cotter '790), efficacies of up to 82% against *peronospora* on grapevines are observed. Applicants submit that these unexpected results rebut any *prima facie* showing that could have been established by the Examiner.

Because the invention, as set forth in Applicants' claims, is not disclosed or made obvious by the cited prior art, reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all

presently outstanding rejections and objections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Andrew D. Meikle, Reg. No. 32,868 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By 

Andrew D. Meikle

Registration No.: 32,868
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant